United States Court of Appeals

for the Second Circuit

APPENDIX

74-1341

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Appellee,

-against-

Docket No. 74-1341

ERIC LINCOLN SELIGSON,

Defendant-Appellant.

----------x

B
P/S

On Appeal From The United States District Court
for the Southern District of New York

APPELLANT'S APPENDIX

LEAVY, SHAW & HORNE
Attorneys for Appellant
233 Broadway, Suite 3303
New York, New York 10007

Edward N. Leavy
Kenneth S. Birnbaum
Of Counsel

PAGINATION AS IN ORIGINAL COPY

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D. C. Form No. 100
CRIMINAL DOCKET

JUDGE CANNELLA 73 CRIM. 11546

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	George E. Wilson, AUSA
ERIC LINCOLN SELIGSON	264-6439
	For Defendant:

ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED — DATE	NAME	RECEIVED		DISBURSED	
J.S.3 ✓								
Fine,			3/12/74	Leavy	5	—		
Clerk,			3/18/74	Treas...			5	—
Marshal,								
Attorney,								
~~Title 18 USC~~ 50 App.								
~~Section~~ 462(a)								
Failure to keep Selective								
Serv. informed of current								
mailing address.								
(One Count)								

DATE	PROCEEDINGS
12-27-73	Filed indictment. (Related to 68Cr963 and assigned to Judge Cannella)
1-21-74	Deft & atty.present...PLEADS NOT GUILTY trial 1-29-74..Bail fixed at $10,000 P.R.B. secured by $1,000 cash in 68 Cr.963 to cover this indictment....Cannella, J.
1-29-74	Filed waiver of trial by Jury..Approved:Cannella, J. TRIAL begun before Cannella,J. without jury and CONCLUDED decision reserved.
2-8-74	Deft & atty.present COURT FINDS DEFT GUILTY. Memo to be filed. P.S.I.ordered, sentence on 3-8-74 at 10 A.M. Deft cont'd on present bail with condition deft report to room 450 receptionist each Monday of the week at 4:30 P.M. CANNELLA,J.t..

See over

Cannella, J.

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT
2-15-74	Filed opinion # 40365*****Deft waived his right to a trial by jury and consented to a trial by the Court. Deft's motion for aj judgment of acquittal is denied and the deft is found guilty on the one count of the indictment...Cannella, J. m/n		
2-15-74	Filed deft's post trial memorandum in support of acquittal.		
2-15-74	Filed Govt's trial memorandum.		
3-8-74	Filed Judgment(Atty.Edward Leavy present)the deft is committed for imprisonment for a period of FOURTEEN(14)MONTHS, on condition deft be confined in a JAIL TYPE INSTITUTION for a period of TWO MONTHS, pursuant to the provisions of Sec. 3651, Ti.18, U.S. Code. Execution of the remainder of TWELVE MONTHS imprisonment is suspended, and deft is placed on probation for a period of TWELVE MONTHS, subject to the standing probation order of this Court. Deft is remanded.....CANNELLA, J.....Docketed 3-8-74.....		
3-8-74	Filed deft's sentence memorandum.		
3-8-74	Filed Govt's sentencing memorandum.		
3-8-74	Filed letter from U.S.Atty. dated 3-5-74		
3-8-74	Filed letter dtd. 2-26-74 from deft's atty.		
3-12-74	Filed notice of appeal from judgment dated 3-8-74...Copies sent to deft & U.S.Atty. Federal House of Detention.(For deft)		
3-21-74	Filed notice to docket clerk that record on appeal has been certified and transmitted to U.S.C.A.		
3-28-74	Filed CJA appointment of counsel Southern Dist.Court Reporters....Cannella, J.		
3-28-74	Mailed original CJA copy 1 to A.O. Wash.D.C. for payment...Cannella, J.		
3-28-74	Filed commitment & entered return. Deft. delivered to F. D. H. N.Y.		
4-22-74	Mailed original CJA copy 1 to the A.O.Wash.for payment of So.Dist.Reporters.		

WMP:eam
M-75-17550

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

-v- : INDICTMENT

ERIC L. SELIGSON, : 68 Cr. 963

Defendant. :

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The Grand Jury charges:

On or about the 15th day of November, 1965, and up to and including the date of the filing of this indictment, in the Southern District of New York, Eric L. Seligson, the defendant, unlawfully and knowingly did fail, neglect and refuse to perform a duty required of him under and in execution of the Universal Military Training and Service Act, Title 50 Appendix, United States Code, Section 451 et seq., and the rules, regulations and directions made pursuant thereto, in that he, being a registrant, unlawfully and knowingly did fail, neglect and refuse to keep his Selective Service System Local Board advised at all times of the address where mail will reach him.

COUNT TWO

The Grand Jury further charges:

On or about the 24th day of November, 1965, and up to and including the date of the filing of this indictment, in the Southern District of New York, Eric L. Seligson, the defendant, unlawfully and knowingly did fail, neglect and refuse to perform a duty required of him under and in execution of the Universal Military

WMP:cam
M-75-17650

Training and Service Act, Title 50 Appendix, United States Code, Section 451 et seq., and the rules, regulations and directions made pursuant thereto, in that he, being a registrant, to whom an Order to Report for an Armed Forces Physical Examination had been mailed by his Selective Service System Local Board, unlawfully and knowingly did fail, neglect and refuse to report to the Armed Forces Examining Station for his Armed Forces Physical Examination.

COUNT THREE

The Grand Jury further charges:

On or about the 25th day of April, 1966, and up to and including the date of the filing of this indictment, in the Southern District of New York, Eric L. Seligson, the defendant, unlawfully and knowingly did fail, neglect and refuse to perform a duty required of him under and in execution of the Universal Military Training and Service Act, Title 50 Appendix, United States Code, Section 451 et seq., and the rules, regulations and directions made pursuant thereto, in that he, being a registrant, to whom an Order to Report for Induction had been mailed by his Selective Service System Local Board, unlawfully and knowingly did fail, neglect and refuse to report for induction into the Armed Forces of the United States.

(Title 50 Appendix, United States Code, Section 462 (a); 32 C.F.R.1641.3,1628.16, 1632.14)

Foreman

ROBERT M. MORGENTHAU
United States Attorney

Defendant's motion to inspect the Grand Jury minutes in the instant action, pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure, is denied in all respects. The defendant's allegation of an improper inconsistency between the several counts of the indictment and his bare assertion, upon information and belief, that the evidence before the Grand Jury was legally insufficient for the return of an indictment (as well as, the conclusory suggestion that an unauthorized individual was present during the deliberations of the Grand Jury) fail to demonstrate "particularized need" or other good and sufficient cause. Such a showing must be made before this court may exercise its discretion to divest the Grand Jury of its secrecy and order the disclosure of the sought after minutes. See, Pittsburgh Plate Glass Co. v. United States, 360 U.S.395(1959); United States v. Proctor & Gamble Co., 356 U.S.677(1958); Costello v. United States, 350 U.S.359(1956); Dioguardi v. United States, 332 F.Supp.7(S.D.N.Y.1971); United States v. Poindexter, 325 F.Supp.786(S.D.N.Y.1971); United States v. Cummings, 49 F.R.D.160(S.D.N.Y.1969); United States v. DiLorenzo, 49 F.R.D. 86(S.D.N.Y.1969); United States v. Ball, 49 F.R.D.153(E.D.Wis.1969). The indictment must be presumed valid absent a showing by the defendant that it is premised upon insufficient evidence or that it resulted from a gross prejudicial irregularity. See, e.g., Cummings, supra. The Government need not elect between seemingly inconsistent counts of the indictment at this time. See, e.g., United States v. Birrell, 266 F.Supp.537(1967).

The defendant misapprehends the thrust of Dennis v. United States, 384 U.S.855(1966) and the cases flowing therefrom, especially, United States v. Youngblood, 379 F.2d 365 (2 Cir.1967). The Dennis line of cases discuss the disclosure of grand jury proceedings at trial and in connection with witnesses called at trial. Dennis and Youngblood do not control the discretionary release of Grand Jury minutes, for the purpose of framing a motion to dismiss the indictment or otherwise, during the pre-trial stage.

The motion to inspect the Grand Jury minutes is denied.

So ordered.

Dated: New York, N.Y.
December 4, 1973

DEC 5 1973

John M Cannella
U.S.D.J.

Service of a copy of the within
is hereby admitted.
Dated:
Attorney(s) for

To HON. JOHN M. CANNELLA, U. S. District Judge
HON. PAUL CURRAN, U. S. Attorney

233-0591

233 Broadway—Suite 4201
NEW YORK, N. Y. 10007
Office and Post Office Address, Telephone

Attorney(s) for Defendant

LEVY, SLAW & HORNE

NOTICE OF MOTION
TO INSPECT
GRAND JURY MINUTES

ERIC L. SELICSON,

Defendant.

GEW:ew
52843

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

-v- : S 73 Cr. 1154

ERIC LINCOLN SELIGSON, : filed 12/27/73

Defendant. :

----------x

The Grand Jury charges:

From on or about the 24th day of November, 1965, to on or about the 1st day of September, 1972, ERIC LINCOLN SELIGSON, the defendant, unlawfully and knowingly did fail, neglect and refuse to perform a duty required of him under and in execution of the Universal Military Training and Service Act, Title 50 Appendix, United States Code, Section 451 et seq., and the rules, regulations and directions made pursuant thereto, in that he, being a registrant, required to keep his local board advised at all times of the address where mail would reach him, unlawfully and knowingly did fail, neglect and refuse to keep his local board advised of the same.

(Title 50 Appendix, United States Code, Section 462(a); 32 C.F.R. 1641.3.)

FOREMAN

PAUL J. CURRAN
United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

ERIC LINCOLN SELIGSON,

Defendant.

----------X

S 73 Cr.1154 JMC

#40365

Appearances:

George E. Wilson, Asst. U.S. Attorney, New York City (Paul J. Curran, U.S. Attorney, Southern District of New York, of counsel), for United States.

Edward N. Leavy, New York City (Kenneth Birnbaum, Leavy, Shaw & Horne, New York City, of counsel), for defendant.

CANNELLA, J.

Defendant, Eric Lincoln Seligson, is charged, in a one count indictment, with knowing failure to keep his local Selective Service board advised of an address where mail would reach him, Section 462(a) of the Universal Training and Service Act of 1951, 50 U.S.C.App.§462(a), [1] and 32 C.F.R.§1641.3, [2] Defendant waived his right to a trial by jury and consented to a trial by the court.

The trial was held on January 29, 1974. Defendant has, at the close of the proof, moved for a judgment of acquittal, Rule 29 of the Federal Rules of Criminal Procedure. That motion is denied. The court finds the defendant guilty, as charged in the indictment, beyond a reasonable doubt.

THE FACTS

Defendant registered for Selective Service with Local Board 16 at New York, New York, on September 3, 1964 and gave his address as 1370 St.Nicholas Avenue, New York, New York. At that time, he was informed by the registrar of his obligation to keep the local board advised of any change in his mailing address and he was given a pamphlet entitled "Selective Service and You" which contained similar information. At his registration, defendant completed and signed a classification questionnaire which also contained a warning about his duty to report any address change. On October 12, 1964 the local board mailed to the defendant a Registration Card which included, on the reverse side, a similar notice. On October 19, 1964 the defendant was forwarded a Notice of Classification (he was classified I-A on October 15, 1964) which stated a similar warning concerning his obligation to report address changes.

On July 19, 1965 the local board received a letter from defendant stating that he had changed his address to 272 Seventh Street, Palisades Park, New Jersey.

The defendant was mailed a notice to report for a physical examination by the local board on July 22, 1965. He appeared at the physical and was found fully acceptable for induction on August 2, 1965. 3/

On August 16, 1965 the local board received a letter from defendant which stated that he no longer resided at the New Jersey address and that he would be departing for Europe shortly. He advised that during the period that he was to be abroad his American address would be 1670 Florida Street, San Francisco, California (his mother's address) and that he would also recive mail at the American Express Office, London, England. Defendant further stated that he would "notify the Selective Service System as to any change in [his] classification." 4/

On November 15, 1965 the local board mailed a notice for a second physical examination to defendant at the San Francisco address. On November 24, 1965 the local board received a letter from defendant's mother (together with the contents of the November 15 mailing) stating that defendant was in Europe and that she was not in a position

to contact him. [5/] On November 26, 1965 the board directed a mailing to the defendant at American Express, London; this letter was returned on March 17, 1966 marked "Unclaimed - Not known".

The local board thereafter declared defendant delinquent in his Selective Service obligations on February 1, 1966 and it mailed appropriate delinquency notices to defendant at both the California and London addresses on February 3, 1966. The notice mailed to London was returned to the board on April 13, 1966 marked "Unclaimed - Not known".

On March 23, 1966 the board sent tracer letters to defendant's mother and his grandmother, Lillian Wilson, who had been listed by the defendant as the person who would always know his address. Mrs. Wilson responded March 28, 1966, by stating that she had not seen or heard from the defendant in about a year and she gave the last address for the defendant known to her as 1350 St. Nicholas Avenue, Bronx, New York. On March 30 the board directed a letter to defendant at the address provided by Mrs. Wilson, but this mailing was returned on April 4, 1966

marked "No such number". The board then sent a letter to defendant at the original address furnished by him, 1370 St. Nicholas Avenue, on April 7, 1966. This letter was returned "Moved. Left No Address." on April 11. In the interim, on April 8, the board received a response to its tracer letter from defendant's mother which stated that she had not heard from him since November 1965 and that she did not know his present whereabouts. She suggested that the board again try to reach him at the London American Express office.

Thereafter, on April 12, 1966, the local board mailed a notice of induction for April 25, 1966 to the defendant in San Francisco. This notice was neither returned nor acknowledged. 6/ Defendant did not report on April 25 and on May 12 the local board reported defendant to the United States Attorney as a Selective Service violator.

An F.B.I. investigation was subsequently instituted to locate and apprehend the defendant. "Leads" were sent to numerous cities and countries and, at one point, defendant was located in Canada. In March 1969 the F.B.I. was informed that defendant was expected to arrive

on an Air Canada flight at Kennedy Airport and they requested that the Port Authority Police apprehend him. Defendant was, however, able to excape capture when he fled across the air-field. As a result of the continued F.B.I. investigation defendant was again located, in October 1973, in Blytheville, Arkansas, using the assumed name of Eddie Watts, Jr. He was arrested on October 5, 1973 by the local police and was, thereafter, returned to New York for trial, by the F.B.I.

DISCUSSION

The regulation, 32 C.F.R.§1641.3, places a duty upon a registrant to keep his local board advised of an address where mail will reach him and the statute, 50 U.S.C. App.§462(a), makes a registrant's knowing failure, neglect or refusal to comply with the regulation a crime.

The statute and the regulation do not require a registrant to report his every move to the board, but do impose a continuing obligation to keep the local board advised of a "good" current address. United States v. Read, 443 F.2d 842,844(5 Cir.), cert. denied, 404 U.S.943 (1971); Kokotan v. United States, 408 F.2d 1134,1137

(10 Cir.1969). The address furnished to the board must be one where defendant genuinely intends to call for his mail at reasonable intervals. United States v. Haug, 150 F.2d 911 (2 Cir.1945). The regulation is satisfied "when the registrant, in good faith provides a chain of forwarding addresses by which mail, sent to the address which is furnished to the board, may be, by the registrant, reasonably expected to come into his hands in time for compliance." Bartchy v. United States, 319 U.S.484,489 (1943). See also, United States v. Secoy, 481 F.2d 225 (6 Cir.1973); United States v. Ebey, 424 F.2d 376,377 (10 Cir.1970).

Defendant has failed to meet these requirements. Upon his departure for Europe he furnished the local board with two addresses: that of his mother in San Francisco and the American Express Office, London. The American Express address was a dead letter box; all mail sent there by the board was returned "Unclaimed - Not Known". The San Francisco address was little more. Mail there addressed, was either returned by defendant's mother together with a statement of her lack of knowledge of his whereabouts or neither returned, nor acknowledged. At

neither address could defendant have reasonably expected mail to reach him in time for compliance with his Selective Service obligations, nor did he call for his mail at either location at regular intervals. The San Francisco address did not satisfy the regulation because his mother was unable to contact him or forward to him the mail there received. The London letters were not deliverable because he was not in London at regular intervals to pick them up. It is an unavoidable conclusion that, on the facts of this case, the defendant failed to keep his local board advised of an address where mail would reach him.

The simple failure of the defendant to keep his local board so advised would not, of itself, be a crime. The statute, 50 U.S.C.App.§462(a), requires that the defendant's non-compliance was knowing; the requisite mental element of the offense. The Supreme Court has held that a defendant acts knowingly when it is shown "that there was a deliberate purpose on the part of the [defendant] not to comply with...the regulation." Ward v. United States, 344 U.S.924(1953), reversing per curiam, 195 F.2d 441(5 Cir.1952). The court finds defendant to have acted with such deliberate purpose.

It is clear that defendant had adequate notice of his duty to keep the board informed of an address where mail would reach him. Such notice is plainly demonstrated by his receipt of numerous Selective Service documents which explicitly warned him of his obligation to keep tne board so informed. 7/ Additionally, defendant's previous compliance with the regulation, his informing the board of the change in his address to New Jersey and, later, to San Francisco and London, evidences his knowledge of the obligation imposed. Defendant's knowing non-compliance, guilty intent, is further evidenced by the inability of his mother, who resided at one address given by him, to furnish any information concefning his whereabouts, United States v. Buckley, 452 F.2d 1088 (9 Cir.1971); United States v. Booth, 454 F.2d 318,322(6 Cir.1972); United States v. Williams, _____F.Supp._____, 73 Cr.383 (S.D.N.Y.1973)(MacMahon, D.J.), and by the fact that his grandmother, the person who had been listed by defendant as always knowing his address, could not provide a "good" address for him. Kokotan v. United States, supra, 408 F.2d at 1137; United States v. Booth, supra, 454 F.2d at 322; cf., United States v. Chudy, 474 F.2d 1069,1070-1071 (9 Cir.1973); United States v. Burton, 472 F.2d 757,762-763 and f.n.6 (8 Cir.1973). The return of the letters

sent to London, unclaimed, also demonstrates the knowing character of defendant's non-compliance. The regulation is violated when a registrant no longer calls for mail at an address which he has furnished to the board. United States v. Haug, supra, 150 F.2d at 914. [8] It is overwhelmingly clear on the evidence that defendant was aware of his obligation to the board and deliberately refrained from performing it; this is sufficient evidence to support a finding of guilt, United States v. Secoy, supra; United States v. Mostafavi-Kashani, 469 F.2d 224(9 Cir.1972); United States v. Booth, supra, without other proof of specific intent or other corrupt or wicked motive. United States v. Wood, 446 F.2d 505,507(9Cir.1971); United States v. Couming, 445 F.2d 555,557 (1 Cir.1971).

The defendant has advanced two principal arguments or justifications in his defense. [9] His first contention is that a conviction is not here warranted because the local board failed to make all reasonable attempts to reach him at the London address that he had given. He states that although the board sent all relevant mailings to the San Francisco address, it made an inadequate attempt to contact him in London. Defendant asserts that one mailing

to London was insufficient under Haug and Ward and he relies on United States v. Smith, 308 F.Supp.1262 (S.D.N.Y.1969). Initially, the court indicates that this position is premised upon a faulty review of the evidence: that only one mailing to London occurred, [10] when in fact there were two. [11] Additionally, the Smith case is clearly distinguishable on its facts from the instant matter. In Smith proof was adduced to show previous thefts from the mailboxes in question and Judge Motley took judicial notice of frequent mail thefts in housing projects. On those facts the court was unable to conclude beyond a reasonable doubt that defendant had received the notice in question. Here, the defendant asserts, without a shred of evidence to support his position, that because the American Express office in London handles thousands of letters, the letter (or, properly, letters) mailed by the board to him could well have been misdelivered or never delivered at all, thereby not affording him an opportunity to comply. Such pure speculation is not a substitute for proof. [12]

Additionally, the court finds that it was not unreasonable for the board, after twice mailing to the defendant in London and twice having the letters returned as "Unclaimed-Not known", to cease attempting to communicate with him at that address. The efforts of the board were sufficient; it was not required to proceed with an exercise in futility. See, e.g., United States v. Booth, supra.

Defendant's final argument, asserted vigorously at trial, is premised upon the Supreme Court decision in Gutknecht v. United States, 396 U.S.295(1970). In Gutknecht the court held invalid the selective service procedure of declaring a registrant delinquent in his obligations and, thereafter, accelerating his induction. Defendant contends that since the board invoked this invalid practice in his case he should now be acquitted because the instant prosecution is not brought in good faith and because his fear of arrest or immediate induction under the illegal induction order caused him to refrain from informing the board of his whereabouts.

This position is entirely without merit and must be rejected. The action of the local board in declaring the defendant delinquent and accelerating his induction call is plainly irrelevant to the question of his having violated his clear and continuing duty to keep the board advised of an address where mail would reach him. Gutknecht affords no defense to the instant prosecution. United States v. Schwartz, 366 F.Supp.443,449(E.D.Pa.1973). See also,United States v. Zmuda, 423 F.2d 757,759(3 Cir.1970).

CONCLUSION

The court finds beyond a reasonable doubt that the defendant, Eric Lincoln Seligson, knowingly failed to keep his local board advised of an address where mail would reach him. Accordingly, defendant's motion for a judgment of acquittal, Fed.R.Crim.P.29, is denied and the defendant is found guilty on the one count of the indictment.

The foregoing constitute the court's findings of fact pursuant to Fed.R.Crim.P.23.

So ordered.

Dated: New York, N.Y.
February 14, 1974

John M. Cannella
U.S.D.J.

FOOTNOTES

1. Section 462(a) provides in pertinent part that:

> ... (A)ny person ... who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in execution of this [Act], or rules, regulations, and directions made pursuant to this [Act]...,(is guilty of a crime).

2. 32 C.F.R.§1641.3 reads as follows:

> Communication by Mail. It shall be the duty of each registrant to keep his local board advised at all times of the address where mail will reach him.

3. The argument has been advanced herein that at the time of this examination the defendant was informed that he would not be called for induction for at least one year and that his subsequent conduct (departure for Europe) was in reliance upon this representation. The defendant has not proved this pepresentation other than to show that the Selective Service policy at that time was not to draft men under age 20.

4. This letter was the last direct communication between the defendant and his local board and contained the last address furnished by him.

5. The letter also made reference to a mimeographed sheet which defendant had allegedly received at his first physical and which allegedly stated that no one under age 20 would be called for induction. This sheet was not produced at trial, however, the policy expressed appears to be accurate. See, f.n.3, supra. At trial, a Selective Service official testified that this policy was abrogated at about the time of the November 1965 notice to defendant and that defendant thereafter became immediately available for induction, despite his not having yet attained age 20.

6. The ancient presumption that a letter properly addressed, stamped (franked) and mailed was delivered to the addressee in due course of the mail should be noted here. Richardson on Evidence §79, at 55(9th ed., Prince 1964). The other evidence in this case, however, weakens any presumption that defendant actually received this notice personally to almost a nullity.

7. See, p.2, supra. The notice contained in these documents is sufficient notice to the defendant of his obligations to the board. United States v. Buckley, 452 F.2d 1088 (9 Cir.1971); United States v. Denas, 436 F.2d 596,601 (3 Cir.1971); Carson v. United States, 411 F.2d 631,634 (5 Cir.), cert. denied, 396 U.S.805(1969); United States v. Jones, 384 F.2d 781,783(8 Cir.1967); United States v. Capson, 347 F.2d 959,963(10 Cir.), cert. denied, 382 U.S. 911 (1965).

8. Additional evidence of the deliberate nature of defendant's conduct can be inferred from his flight, his hiding out and his use of aliases. This evidence is, however, entitled to little weight and is not needed to sustain a conviction on the other facts of the case.

9. The defendant also asserts that the government has not proved that he acted with a deliberate purpose as required by the Ward case. This contention has already been addressed by the court. Supra, pp.8-10.

10. Defendant's Brief, p.6.

11. See, page 4, supra.

12. Indeed, it was the defendant, and not the board, that caused the mailings to be made to the American Express office, London.